

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Inquiry Concerning the Deployment of)
Advanced Telecommunications)
Capability to All Americans in a Responsible)
and Timely Fashion, and Possible Steps)
to Accelerate Such Deployment)
Pursuant to Section 706 of the)
Telecommunications Act of 1996)

CC Docket No. 98-146

**COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

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September 14, 1998

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SUMMARY

USTA urges the Commission to permit market forces to drive the deployment of advanced data and Internet networks. The record already developed in this proceeding provides extensive information about the public demand for high-speed bandwidth capacity. Section 706 provides the Commission with independent authority to pursue pro-competitive, deregulatory, policies required by the Telecommunications Act of 1996. The Commission should forbear from erecting regulatory barriers such as separate subsidiary requirements, unbundling and resale obligations, and enforcement of arcane interLATA restrictions that place ILECs at a competitive disadvantage to competitors.

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INTRODUCTION

The United States Telephone Association ("USTA") hereby files its comments in response to the Commission's Notice of Inquiry ("NOI") in the above-referenced proceeding, released August 7, 1998. USTA is the principal trade association of the incumbent local exchange carrier industry ("ILECs").

Market forces, not Commission regulations, should dictate the deployment of advanced data and Internet networks. Access by residential and business customers to high-speed data and Internet networks and services is important to the growth of the domestic economy, critical to the ability of businesses to compete in global markets, and will further the education and healthcare needs of the nation. Regulations serve as disincentives to the deployment of advanced telecommunications networks, delay the availability of innovative products and services, limit

consumer choices, while increasing the costs for services that are available. USTA urges the Commission to recognize that the benefits to consumers derived from regulatory forbearance and market-based decision making cannot be matched by government regulations in a rapidly changing technological environment.

I. THE RECORD PROVIDES ANSWERS TO THE QUESTIONS RAISED BY THE COMMISSION

The Commission acknowledges that its "regulatory system is uneven in its treatment of different technologies."¹ As the Commission explains in the *NOI* its "statutes and rules contain separate regimes for wireline and wireless, for local and long distance, for telecommunications, broadcasts, and cable television, and so on."² The *NOI* makes clear that the Commission believes that "[d]igitization and packet-switching, however, may lead these industries to compete with each other."³ According to the Commission, its regulations "may distort the performance of the market to have separate regimes of regulation for competitors in a converging market."⁴ USTA agrees that the Commission should develop policies which are consistent with the pro-competitive, deregulatory, intent of the Telecommunications Act of 1996 ("Act"). By eliminating burdensome regulations like the interLATA restrictions on RBOCs, and forbearing from imposing unbundling, resale and separate subsidiary requirements, the Commission will

¹ *NOI* at 2, ¶4.

² *Id.*

³ *Id.*

⁴ *Id.*

ensure that incentives will exist for ILECs to commit the financial resources necessary to deploy high-speed data and Internet networks throughout the nation on a regulatory neutral basis with other competitive providers of such services.

In the *NOI*, the Commission seeks information on the current and future deployment of advanced telecommunications networks, including ILECs, interexchange carriers ("IXCs"), competitive local exchange carriers ("CLECs"), multichannel video providers ("MVPD"), terrestrial wireless providers, satellite systems, ISPs, and private networks.⁵ According to the Commission: "We welcome details: we urge all commenters to supply us, as appropriate, with depictions of existing networks, plans for new ones, technical description, deployment schedules, maps, and cost projections."⁶

The details that the Commission seeks have already been provided and are otherwise readily available at the Commission. In the *NOI*, the Commission acknowledges that six Petitions were filed suggesting actions the Commission should take to further the deployment of advanced telecommunications networks.⁷ Ameritech, Bell Atlantic, SBC, and U S West filed Petitions seeking regulatory forbearance pursuant to Section 706. Each Petition docketed by the Commission included comments and reply comments from interested parties which addressed the very questions raised in the Commission's *NOI*. USTA has consistently argued that the public demand for bandwidth capacity, the already competitive data and Internet markets, and

⁵ See *NOI* at 7-21, ¶18-58.

⁶ *Id.* at 7, ¶18

⁷ *Id.* at 4-5, ¶11 note 6.

global competitiveness of American businesses necessitates a new regulatory paradigm in which market forces, not arcane regulations based on fallacious theories, must drive the deployment of advanced telecommunications networks and services.⁸

The Commission is also considering Bell Atlantic-West Virginia's emergency request for interLATA relief "to provide high capacity computer-to-computer links needed to connect West Virginia's schools and universities to the Internet, and to ensure that interLATA high-speed bandwidth is available by the start of the school year...."⁹ USTA supports the relief sought by Bell Atlantic-West Virginia and agrees with its comments that the Commission can and should act to remove barriers to ILECs deploying advanced telecommunications networks based upon

⁸ See, e.g., *USTA Comments and Reply Comments In the Matter of Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Services*, CC Docket No. 98-11, *Petition of US WEST for Relief from Barriers to Deployment of Advanced Telecommunications Services*, CC Docket No. 98-26, *Petition of Ameritech for Relief from Barriers to Deployment of Advanced Telecommunications Services*, CC Docket No. 98-32, April 6, 1998 and May 6, 1998; *USTA Comments In the Matter of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. §160 for ADSL Infrastructure and Service*, CC Docket No. 98-91, June 24, 1998; *USTA Comments and Reply Comments in Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act*, CCB/CPD 98-15, RM 9244, April 13, 1998 and May 4, 1998; *USTA Comments In the Matter of Petition of the Association for Local Telecommunications Services (ALTS) from a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-78, June 17, 1998. The above-referenced comments are incorporated by reference and made a part of USTA's comments in this proceeding.

⁹ See *Emergency Petition of Bell Atlantic-West Virginia for Authorization to End West Virginia's Bandwidth Crisis* at 2, July 22, 1998, FCC Public Notice, NSD-L-98-99, released July 28, 1998.

the record in the consolidated 706 proceeding.¹⁰ Additional details on the deployment of advanced data and Internet networks and the scope of competition provided by a variety of competitors other than ILECs, was recently filed by USTA. On August 12, 1998, USTA made an *ex parte* filing in CC Docket Nos. 98-146, and 98-147 in which an exhaustive report by Robert Crandall and Charles Jackson entitled *Eliminating Barriers to DSL Service* was entered into the record.¹¹

Further details are available to the Commission in the form of two research papers from the Commission's own Office of Plans and Policy ("OPP"). In 1997, OPP released a working paper on the Internet and telecommunications policy.¹² More recently, OPP released a working paper on the Internet and cable.¹³

The record contains more than enough data and information for the Commission to act decisively to forbear from imposing any regulations on ILEC deployment of high-speed data and Internet networks. Moreover, regulatory forbearance should not be dependent on the current and future deployment plans of various companies, but should instead reflect the pro-competitive,

¹⁰ *Id.* at 1, note 2.

¹¹ *Ex parte* letter from USTA's Vice President and General Counsel Lawrence E. Sarjeant to FCC Secretary Margalie Roman Salas, August 12, 1998 in which was attached a letter and the Crandall and Jackson study addressed to Commission Chairman William E. Kennard and Commissioners Susan Ness, Michael K. Powell, Harold Furchgott-Roth, and Gloria Tristani.

¹² See Werbach, *Digital Tornado: The Internet and Telecommunications Policy*, OPP Working Paper Series No. 29 dated March 1997.

¹³ See Esbin, *Internet Over Cable: Defining the Future in Terms of the Past*, OPP Working Paper Series No. 30 dated August 1998.

deregulatory intent of the Act. Market forces, not government regulations, must drive deployment of innovative, high-speed, data and Internet networks and services.

II. COMMISSION AUTHORITY TO FORBEAR FROM REGULATION UNDER SECTION 706 IS UNDENIABLE

According to the Commission, Section 706 does not provide it with independent authority to forbear from applying the Act's requirements.¹⁴ Contrary to the Commission's decision, the plain language of the Act provides that the Commission can exercise the forbearance authority in Section 706 of the Act independent of the forbearance standards required in Section 10(a) of the Act.

Section 706(a) provides the Commission with an affirmative obligation to encourage the deployment of advanced telecommunications through regulatory forbearance. There is no reference in either Section 706 or Section 10 of the Act, nor any reference in the legislative history of either section, that Congress intended that the forbearance standard in Section 706 is dependent on the requirements for forbearance in Section 10, especially given that the Commission has an affirmative duty to use regulatory forbearance as a tool to remove regulatory barriers to infrastructure investment. Thus, Section 706 provides the Commission with an independent grant of authority to forbear from applying the requirements of the Act when to do so will promote competition and the rapid deployment of advanced telecommunications networks and services.

¹⁴ *Memorandum Opinion and Order* at 35-38, ¶¶70-79, FCC 98-188, released August 7, 1998.

III. REGULATORY DELAY AND INCREASED REGULATION OF ILECS REDUCES COMPETITION WHILE IMPOSING UNTOLD COSTS ON CONSUMERS

USTA has long been concerned about the impact of regulation on incentives to innovate and invest in telecommunications infrastructure and has recommended ways to change Commission rules in order to permit deployment of new services in a timely manner.¹⁵ Clearly, there is no dispute that: (1) deployment of high-speed, advanced telecommunications networks is in the public interest; (2) the information technology marketplace is highly competitive with market forces fueling consumer and business demands for expanded bandwidth capacity for data and Internet services; (3) regulatory forbearance must drive the deployment of advanced telecommunications networks; and (4) America's global technological and economic advantage can only be impeded by imposition of government regulations which serve as disincentives to investment by ILECs in high-speed data and Internet networks.

As made clear by USTA "In the presence of competitive entry maintaining unneeded regulatory constraints on the incumbent has the potential of distorting market outcomes and having long-lasting deleterious effects on industry performance...."¹⁶ In addition, Schmalensee and Taylor have argued that the cost of regulatory delays and artificial efforts by regulators to manage competition in a changing competitive and technological environment leads to adverse consequences for the public and the economy:

¹⁵ See, e.g., *USTA Comments on Access Reform*, CC Docket No. 96-262 (January 29, 1997).

¹⁶ *USTA Comments* at 23, citing Schmalensee and Taylor *Economic Aspects of Access Reform* at 22, Attachment 1, CC Docket No. 96-296 (January 29, 1997).

The social costs of regulatory constraints that artificially increase costs and fail to provide meaningful consumer benefits and/or protections can be staggering. This is especially the case in a rapidly changing and dynamic telecommunications environment. An egregious example of the harms that can result from delay and not permitting market forces to work is the licensing of cellular telecommunications. The 10 to 15 year regulatory delay in licensing systems is estimated to have cost society more than \$86 billion or about 2% of GNP in 1983 when cellular service began.

Moreover, unnecessarily delaying the offering of new and innovative services demanded by consumers, by requiring public interests tests to obtain relief from regulatory constraints for new service offerings can impose high costs on society. Voice messaging services provide another example. Additional consumer welfare from the availability of LEC voice messaging services has been estimated at between \$800 million and \$1.4 billion per year, so that [g]overnment actions which either speed up or delay the introduction of these new services can have important welfare effects on the economic welfare of its citizens.¹⁷

Economist Jerry Hausman has argued that regulations have a significant dollar impact on the deployment of new technologies and services and argues in favor of the Commission adopting a cost benefit analysis prior to imposing regulatory mandates.¹⁸ Professor Hausman states that the introduction of new services can lead to large consumer benefits. For example, he cites the \$1.27 billion annual gain in consumer welfare from voice messaging services since 1994, and \$50 billion annual gain since the introduction of cellular services.¹⁹ Conversely,

¹⁷ See Schmalensee and Taylor, *The Need for Carrier Access Pricing Flexibility in Light of Recent Marketplace Developments* at 5-6 filed on behalf of USTA, CC Docket No. 96-262 (January 16, 1998)(Access Reform).

¹⁸ See Jerry A. Hausman's *Valuing the Effect of Regulation on New Services in Telecommunications*, Brookings Institute Economic Activity Microeconomics, 1997.

¹⁹ *Id.* at 2.

Professor Hausman calculates that through regulatory delay, billions of dollars have been lost, with cellular losses totaling over \$100 billion.²⁰ Professor Hausman's conclusions regarding the impact of regulatory delay apply equally to Commission decision-making in this proceeding:

Regulation, as currently implemented, may well be unable to keep up with the fast-paced changes in telecommunications technology. Consumer welfare losses are likely to be quite large because of regulatory delays and pricing distortions. Past welfare losses have been in the billions of dollars per year, and the FCC's current approach may well lead to comparable consumer welfare losses in the future.²¹

In their study, Crandall and Jackson discuss current and future competition in Internet access through cable modems, cellular-based Internet service providers, CLECs, through high-speed satellite Internet access and packet radio Internet access. With respect to ILECs deploying DSL, the authors concluded:

Applying retail or universal service regulation to DSL service makes it virtually certain that such investments would become unattractive. Moreover, if wholesale unbundling or resale were allowed in the first six or seven years, the ILEC would find it much more difficult to recover its investment. Indeed, the availability of unbundled copper loops may, by itself, require the ILEC to recover its DSL investment more rapidly than our model allows....

One key step in bringing ... [competition] ... to local telecommunications is to ensure that LECs have the proper incentives to invest in the new data transmission technologies.²²

²⁰ *Id.* at 3.

²¹ *Id.* at 36.

²² Crandall & Jackson *Eliminating Barriers to DSL Service* at 56 (July 1998).

Chairman Kennard has raised the importance of eliminating burdensome regulations:

I want to get rid of any regulations that are not necessary to promote competition or protect consumers.... Much of what I have learned recently is in the area of common carrier regulation, and the mass of detailed, often arcane, rules that have accumulated over the years is staggering to me.... I am particularly interested in eliminating barriers to innovation and investment.²³

The Chairman has also recognized the importance of ILECs also benefitting from innovations which lead to first-to-market advantages. As the Chairman stated:

I, for one, am not afraid of seeing wireline telephone providers have a first mover advantage -- if you make the investments to get to market first²⁴

Regulatory forbearance under Section 706 provides the Commission with the opportunity to remove barriers to infrastructure investments by ILECs deploying advanced, high-speed, data and Internet networks that the public demands. Without such relief, ILECs will operate at a competitive disadvantage in markets dominated by competitors unencumbered by regulatory obligations applicable only to ILECs.

CONCLUSION

Section 706 requires the Commission to remove barriers, not erect new regulatory obstacles, to competition. Market-based forces must drive competition. The absence of market-driven competition will lead to regulatory delay in deployment of advanced data and Internet

²³ Remarks of Chairman Kennard to *USTA's Inside Washington Telecom*, Washington, D.C. (April 27, 1998).

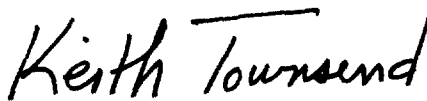
²⁴ *Id.*

networks and services - - delays akin to the multi-billion dollar losses in consumer welfare benefits associated with the deployment of cellular and voice messaging services. To ensure that the benefits derived from deployment by ILECs of advanced telecommunications networks does occur, the Commission need only open the door to competition by stepping away from burdensome regulatory paradigms. They do nothing more than forestall deployment of critically important technological innovations, increase consumer costs, limit choice, and protect certain competitors from the very competition intended by the Act. USTA urges the Commission to create incentives for ILECs to commit the financial resources necessary to make infrastructure investments in advanced telecommunications networks by eliminating separate subsidiary, unbundling and resale requirements and the interLATA traffic restrictions applicable to RBOCs.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

September 14, 1998

A handwritten signature in black ink that reads "Keith Townsend". The signature is written in a cursive style with a horizontal line underneath the name.

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